

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

SCOTT SYZAK,

Plaintiff,

v.

ANNA BENSON,

Defendant.

Case No. 15-10928

Honorable Nancy G. Edmunds

**ORDER AND OPINION ACCEPTING THE MAGISTRATE JUDGE'S MAY 25, 2018
REPORT AND RECOMMENDATION [47]**

Currently before the Court is the magistrate judge's May 25, 2018 report and recommendation. (Dkt. # 47). On June 15, 2018, Plaintiff filed an objection to the magistrate judge's report. (Dkt. # 48). Having conducted a *de novo* review of the parts of the Magistrate Judge's report to which specific objections have been filed, the Court DENIES Plaintiff's objection and ACCEPTS AND ADOPTS the magistrate judge's report and recommendation.

As noted by the magistrate judge, the Court ordered Plaintiff to respond to Defendant's motion to dismiss and warned that failure to do so could result in sanctions, including granting all or part of the relief requested by the moving party. (Dkt. # 44). Plaintiff failed to respond, and the Court ordered him to show cause why the Court should not dismiss his complaint. (Dkt. # 46). The Court again warned that failure to respond to the Order to Show Cause or file a response to Defendant's motion to dismiss would result in a recommendation that the motion be granted or that the case be dismissed under Fed.

R. Civ. P. 41(b). *Id.* Plaintiff failed to respond to the Order to Show Cause and again failed to respond to Defendant's motion to dismiss. Accordingly, the magistrate judge recommends dismissing this case with prejudice. (Dkt. # 47). This Court agrees with the magistrate judge that the relevant factors weigh in favor of dismissing this case for failure to prosecute. See *id.* at Pg ID 3-6; *Wu v. T.W. Wang, Inc.*, 420 F.3d 641, 643 (6th Cir. 2005); *Labreck v. U.S. Dep't of Treasury*, No. 11-10155, 2013 WL 511031, at *2 (E.D. Mich. Jan. 25, 2013), *adopted by* No. 11-10155, 2013 WL 509964 (E.D. Mich. Feb. 12, 2013); *Croton v. Recker*, No. 11-15433, 2012 WL 3888220, at *2 (E.D. Mich. Sept. 7, 2012); *White v. Bouchard*, No. 05-73718, 2008 WL 2216281, at *5 (E.D. Mich. May 27, 2008). Indeed, Plaintiff does not object to the magistrate judge's conclusion.

Rather, in his objection, Plaintiff merely asserts that he cannot prosecute this case or respond to Defendant's motion to dismiss without assistance because he finds the issues too complex, and that he has no money to hire a lawyer. However, as the magistrate judge had already found in a previous order denying without prejudice Plaintiff's earlier motion to appoint counsel, an order to which Plaintiff did not object to, it appears from reading the complaint as well as Plaintiff's previous motions and his success in challenging a prior report and recommendation, that the issues raised in Plaintiff's complaint are not of an unduly complex nature, and that Plaintiff has an adequate understanding of the issues involved in this case, is able to read and write in English, and has some familiarity with the Federal Rules of Civil Procedure. The magistrate judge correctly noted that there is no right to counsel in prisoner civil rights cases, and that the appointment of counsel in such proceedings is justified only in exceptional circumstances. See *Lavado v. Keohane*, 992 F.2d 601, 606 (6th Cir. 1993). Plaintiff has pointed to no exceptional circumstance in this

case, which involves one Defendant and straightforward factual allegations. See Dkt. # 1 (alleging that Defendant Food Service Director forced Plaintiff to have sex with her several times while Plaintiff was employed in the kitchen at the Macomb Correctional Facility, that Plaintiff contracted a sexually transmitted disease as a result, and that Defendant threatened to falsely accuse him of rape). Accordingly, this Court denies Plaintiff's objection.

For the reasons set forth above, the Court DENIES Plaintiff's objection and ACCEPTS AND ADOPTS the magistrate judge's report and recommendation. It is ordered that Plaintiff's complaint is hereby DISMISSED with prejudice. It is further ordered that Defendant's motion to dismiss (Dkt. # 43) is hereby terminated as MOOT.

SO ORDERED.

s/Nancy G. Edmunds
Nancy G. Edmunds
United States District Judge

Dated: June 19, 2018

I hereby certify that a copy of the foregoing document was served upon counsel of record on June 19, 2018, by electronic and/or ordinary mail.

s/Lisa Bartlett
Case Manager